IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 19698 of 2001

Between:

1 C.G.Deiva Sahavasam S/o. Gabriel,
R/o Hyderabad
2 P.D.Christopher S/o. Christdas
R/ oHyderabad

..... PETITIONERS

AND

1 State of Andhra Pradesh, rep. by its Secretary to Government,
Education Department, Secretariat, Saifabad, Hyderabad
2 The Director of School Education Andhra Pradesh, Hyderabad
3 The Regional Joint Director of School Education, Hyderabad
4 The District Educational Officer, Hyderabad
5 The Chairman, Board of Education, CSI Medak Diocese,
145, Macintyre Road, Secunderabad-500 003.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be Pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus declaring as illegal and arbitrary the proceedings in Memo No.9994/PS-1/1999 dt: 19/7/2000 as also consequential Memo No.14879/PS-1/2000-1 dt: 25/10/2000 issued by the 1st Respondent and issue a consequential directions to the Respondents to release grant of salary for the period from 8/2/1996 to 8/3/1998 with interest @ 24% per annum.

Counsel for the Petitioner: MR.D.V.SITARAMAMURTHY

Counsel for the Respondents1 to 4: GP FOR SCHOOL EDUCATION

Counsel for the Respondent No.5: None appeared

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 19698 of 2001

ORDER:

Heard Sri D.V. Sitharam Murthy, the learned counsel appearing for the petitioners and the learned Government Pleader for School Education appearing on behalf of the respondents 1 to 4. None appeared for the fifth respondent, though served.

The petitioners, who are working as School Assistants with the fifth respondent, filed this Writ Petition, *inter alia*, seeking for a Writ of Mandamus declaring the proceedings vide memo dated 19.07.2000 and 25.10.2000, issued by the first respondent as illegal. The claim of the petitioners is in regard to their entitlement of amount towards salary, etc. during the period from 08.02.1996 to 08.03.1998.

The facts giving rise to this case are that the first petitioner was initially appointed on 23.06.1972 and the second petitioner was appointed on 15.06.1967 and at the relevant point of time both the petitioners were working at St. Thomas (SPG) Boys High School, Secunderabad. It is pointed out that there has been certain disputes with the management of the said school where one Mr. Pakiadas claiming to the Executive Secretary of the society, forcibly took charge as Correspondent. Ultimately, it was held that the Pakisdas is not authorised nor has any power or control in respect of the management. However, it so happened that the said Pakiadas issued orders of transfer of petitioners on 08.02.1996 and relieved them immediately, whereupon the petitioners submitted a representation on 09.02.1996 to the respondents 4 and 5, followed by detailed representations to the fourth respondent again on

25.05.1996, 21.06.1997 and 24.06.1997. On 07.07.1997, the fourth respondent asked the petitioners to attend his office, however, as per the order dated 22.01.1998, the fourth respondent appointed interim receiver. On 06.03.1998, the third respondent issued proceedings requesting the fourth respondent and the Deputy Education Officer to allow the petitioners to discharge their duties. The petitioners have joined duty on 09.03.1998. On 13.03.1999, the fifth respondent requested the first respondent to release the back wages, however, as per the impugned proceedings dated 19.07.2000, the first respondent rejected the claim for salary for the alleged gap period. The review petition filed by the petitioners on 24.07.2000, was rejected on 25.10.2000 by the first respondent. Hence, the Writ Petition.

The main ground urged by Sri D.V.Sitaram Murthy, learned counsel appearing for the petitioners is that having regard to the findings as already arrived at to the effect that the said Pakiadas has no such power or control over the management of fifth respondent, question o f insisting upon the said orders passed by him against the petitioners and treating the period subsequent thereto, as not in duty and without paying salary, is totally bad. In fact, it is stated that appropriate action should have been taken against the concerned rather than putting the petitioner to such jeopardize.

The learned Government Pleader appearing on behalf of the respondents 1 to 4 sought to sustain the impugned order on the ground that on the basis of ‘no work and no pay’, the petitioners’ claim was rightly rejected. Admittedly, they were absent from the duties in the aforesaid period and that the fact that Pakiadas, the author of the orders of transfer, is no longer and was already transferred to other institution and has no power, is not a ground to claim any salary during the said period.

With these and other submissions made across the bar from both the sides, the only question arises for consideration is as to whether the

petitioners are entitled for salary and other benefits during the aforesaid period from 08.02.1996 to 08.03.1998 ?

There is no dispute to the fact that the petitioners' working as School Assistants at the relevant point of time with the said St. Thomas (SPG) Boys High School, Secunderabad. There is also no dispute in regard to the fact that certain disputes arose at the instance of said Pakiadas regarding the management and also his taking over of charge as Correspondent. Admittedly, the orders of transfer of petitioners were passed by the said Pakiadas on 08.02.1996 and that the said Pakidas is held to be not having any such power or control over the institution. Therefore, necessary corollary is to see what would be the effect or consequence on the orders passed by the said Pakiadas. It is too late in the day to say that such orders passed by a person, who is held to be having no power, can be said to be valid. The fact remains that almost total reversal started in regard to the orders passed by the said Pakiadas. However, the objections raised on behalf of the respondents are that the petitioners could have as well joined the duty at the place of duty after such transfer and made a claim, would not be sustainable in view of the fact that no illegal orders could be given effect to or acted upon. Once an order whereunder certain rights are sought to be denied, is varied with or set aside, it only goes to show that such order no longer exists and could not possibly be enforced either by the management or by the employee. Virtually, it is the *no nest* order without any consequence either. It is not the case of the respondents that they were permitted to continue or join back with the erstwhile place at St. Thomas (SPG) Boys High School, Secunderabad. No reason or explanation is forthcoming on this aspect. There is total silence thereon. The authorities should have taken care and protected the interest of the employees especially where it is sought to be held that one of the important persons, who is intermittent with the management, is held to be not competent, necessarily either by way of restitution or by all such actions or steps taken, the clock has to be put back. It is not the

case of respondents that the petitioners themselves voluntarily did not attend the duty nor responsible for any such absence. On the face of it, absence of the petitioners is only attributed to the orders passed by the said Pakiadas, a non-entity. In view of the same, it can not be said that the petitioners are responsible for any such illegal actions, which have been set aside subsequently. Necessary corollary is that the petitioners would be entitled to all such benefits under law, including salary, etc.

In an unreported decision passed in W.P. No. 21259 of 1996 on 30.11.2004, this court, by taking note of the fact that order of transfer having been set aside, held that it no longer subsists and it amounts to the conclusion that there is no such order of transfer and the employee continues to be in service. In view of the same, it has to be held that the petitioners' absence in the above mentioned period, can not be attributed to them and they are entitled to all the service benefits including salary, etc. in the said period.

The Writ Petition is, accordingly, allowed setting aside the impugned orders dated 19.07.2000 and 25.10.2000. The respondents are directed to pay salary and all other benefits to the petitioners to which they are entitled under law, for the period from 08.02.1996 to 08.03.1998 within a period of two months from the date of receipt of copy of this order. No costs.

(B.Prakash Rao, J.)

14.02.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Monday, the fourteenth day of February, two thousand and five.

… Registrar

To

1 The Secretary to Govt.,State of Andhra Pradesh,
Education Department, Secretariat, Saifabad, Hyderabad
2 The Director of School Education Andhra Pradesh, Hyderabad
3 The Regional Joint Director of School Education, Hyderabad
4 The District Educational Officer, Hyderabad
5. 2 C. Cs to G.P. for School Education, High Court Buildings, Hyderabad
(OUT)

6. 2 C.D. copies.